

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11385 of 1993

with

SPECIAL CIVIL APPLICATION No 11386 of 1993

TO SPECIAL CIVIL APPLICATION NO. 11427 OF 1993

Date of decision: 4-7-1997

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SACHIN UDYOGNAGAR SAHAKARI MANDLI LTD.

Versus

STATE OF GUJARAT

Appearance:

MS VASUBEN P SHAH, Senior Advocate, with Ms. Kalpana Brahmbhatt for Petitioners
MR HM BHAGAT with Mr. M.R. Raval for Respondent No. 1

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 04/07/97

ORAL JUDGMENT:

The parties are in agreement that common question of law and facts are involved in these special civil applications and as such these petitions have been heard together and are being decided by this common judgment.

2. In these special civil applications the orders impugned have been passed by the respondent No.2 under section 39 of the Bombay Stamp Act, 1958. The counsel for the petitioner raised manifold contention challenging the validity of this order. A preliminary objection is raised by the learned counsel for the respondent about the availability of statutory alternative remedy against the order which deserves acceptance, and as such I do not consider it necessary to advert to all those contentions. Even if the order is without jurisdiction as contended by the learned counsel for the petitioners, I fail to see how it can be justified to bypass the statutory remedy of appeal provided. Against the order passed by respondent No.2 under section 39 of the Act, correctional remedy is provided and that correction in the impugned order can be made on all the grounds including the ground of lack of jurisdiction. Learned counsel for the respondents submitted that in identical matters this court has taken the view that the petitioners should first avail of the alternative remedy. Copy of the order passed by this court has been produced for the perusal of this court. This Court has divided the matters in two sets. The second set is where challenge is made to the orders under section 32A of the Act, and those matters were not entertained on the ground that alternative remedy is available. In the present case the order impugned is passed under section 39 of the Act and against that appeal is provided under section 53 of the Act. It cannot be said that the remedy of appeal is not efficacious and effective.

3. In the result the special civil applications are dismissed on the ground of availability of alternative remedy. Rule discharged. Meanwhile the petitioners, if

they so desire, may file appeal against the impugned orders before the appellate authority. The appellate authority shall consider the matter on merits. It is further directed that if the appeal is filed by the petitioners within one month from the date of receipt of the certified copy of this order, the same shall not be dismissed on the ground of limitation. Interim relief shall continue to operate till the appellate authority decides the appeals. In case the appeals are not filed within the period aforesaid, the interim relief shall stand discharged. No order as to costs.

.....

csm